



# Software as a Service (SaaS) Agreement

Version 15.7.2021

## 1 Definitions and interpretation

**1.1** The definitions and rules of interpretation set out in the schedule shall apply to our Agreement.

**1.2** Reference to SE means the Supplier, the Supplier's websites and services collectively.

**1.3** In our Agreement:

**1.3.1** each Order Form entered into by the Customer shall form a separate agreement, incorporating these terms and conditions (**Terms**) together with the Addendums, and the Policies (our Agreement);

**1.3.2** in the event of any conflict in respect of the provisions of our Agreement and/or the documents referred to therein the following order of priority shall prevail (in descending order of priority):

- a) the Order Form;
- b) the Addendums;
- c) the Policies;
- d) the Terms; and

**1.3.3** subject to the order of priority between documents in *clause 1.3.2*, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

## 2 Rights of use

**2.1** Upon Order Acceptance and subject to the terms of our Agreement, SE grants the Customer a non-exclusive, non-transferable, personal right to:

**2.1.1** use each Subscribed Service during Service Hours; and

**2.1.2** use the Services as strictly necessary for its use by Authorised Users of the Subscribed Service





**2.3** The Customer acknowledges that the Services do not include:

**2.3.1** any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Services);

**2.3.2** dedicated data back-up or disaster recovery facilities (and the Customer should ensure it at all times maintains back-ups of all Customer Data); or

**2.3.3** legal, accounting or other professional or regulated services and that, except as expressly stated in our Agreement, no assurance is given that the Services will comply with or satisfy any legal or regulatory obligation of any person.

### 3 Authorised Users

**3.1** The Customer shall ensure that only Authorised Users use the Subscribed Services and that such use is at all times, in accordance with our Agreement.

**3.2** The Customer shall ensure that the maximum number of Authorised Users does not exceed the number of Purchased Authorised Users Accounts for the relevant Subscribed Service at any time. The Customer is entitled to remove one individual as an Authorised User and replace them with another individual in accordance with the terms of our Agreement, but Authorised User accounts cannot be shared or used by more than one individual at the same time.

**3.3** Without prejudice to any other right or remedy of SE, in the event the Customer is in breach of *clause 2* then:

**3.3.1** the warranties in *clause 6.1* shall cease to apply to the relevant Subscribed Service for the duration of the period during which the Customer is in breach of *clause 2*; and

**3.3.2** the Customer shall be liable to pay for the number of Authorised Users above the number of Purchased Authorised Users Accounts for that Subscribed Service for the relevant period during which infringement occurred in accordance with SE's then current rates.

**3.4** The Customer shall:

**3.4.1** be liable for the acts and omissions of the Authorised Users and the Authorised Affiliates as if they were its own;

**3.4.2** permit SE or its designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this agreement.

Each audit may be conducted no more than once every 6 months, at SE's expense and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.





**3.6** The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of our Agreement.

**3.7** If any password has been provided to an individual that is not an Authorised User, the Customer shall, without delay, disable any such passwords and notify SE immediately.

**3.8** *Clauses 3.5 to 3.7 (inclusive)* shall survive termination or expiry of our Agreement.

## 4 Indemnity

**4.1** The Customer shall indemnify, keep indemnified and hold harmless SE (on SE's own behalf on behalf of each of SE's Affiliates) from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) as a result of the Customer's breach of our Agreement.

**4.2** This *clause 4* shall survive termination or expiry of our Agreement.

## 5 Support

**5.1** The Subscribed Service includes SE's standard Support Services at no additional cost for each Subscribed Service to the Customer for the duration of the respective Subscribe Service Term, to the extent and in the manner specified in SE's Support Services Policy as amended from time to time available at <https://securenvoy.com/cloud-sla/>.

**5.2** SE will use reasonable endeavours to notify the Customer in advance of scheduled maintenance but the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

## 6 Warranties

**6.1** Subject to the remainder of this *clause 6*, SE warrants that each Subscribed Service shall operate materially in accordance with the description of the services set out in the Order Form, when used in accordance with our Agreement and under normal use and normal circumstances during the Subscribed Service Period and it will provide each of the Services with reasonable care and skill.

**6.2** The Customer acknowledges that *clause 1* does not apply to Free or Trial Services or to Support Services provided in connection with the same. Without prejudice to SE's obligations under our Agreement in respect of Protected Data, Free or Trial Services and Support Services provided in connection with the same are provided 'as is' and without warranty to the maximum extent permitted by law.

**6.3** SE does not warrant that the Customer's use of the Services will be uninterrupted or error-free or without delays.





such period is at least ten consecutive days). To the maximum extent permitted by law, this *clause 4* sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in *clause 6.1*.

**6.5** The warranties in *clause 1* are subject to the limitations set out in *clause 13* and shall not apply to the extent that any error in the Services arises as a result of:

**6.5.1** incorrect operation or use of the Services by the Customer, any Authorised Affiliate or any Authorised User (including any failure to follow the instructions provided by SE or failure to meet minimum specifications);

**6.5.2** use of any of the Services other than for the purposes for which it is intended;

**6.5.3** use of any Services with other software or services or on equipment with which it is incompatible (unless SE recommended or required the use of that other software or service or equipment);

**6.5.4** any act by any third party (including hacking or the introduction of any Virus or Vulnerabilities);

**6.5.5** any modification of Services (other than that undertaken by SE or at its direction); or

**6.5.6** any breach of our Agreement by the Customer (or by any Authorised Affiliate or Authorised User).

**6.6** The Customer acknowledges that no liability or obligation is accepted by SE (howsoever arising whether under contract, tort, in negligence or otherwise):

**6.6.1** that the Subscribed Services shall meet the Customer's individual needs, whether or not such needs have been communicated to SE;

**6.6.2** that the operation of the Subscribed Services shall not be subject to minor errors or defects; or

**6.6.3** that the Subscribed Services shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly referred to as compatible by SE.

**6.7** Other than as set out in this *clause 6*, and subject to *clause 13.7*, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

## 7 Customer's responsibilities

**7.1** The Customer shall (and shall ensure all Authorised Affiliates and Authorised Users shall) at all times:

**7.1.1** comply with the applicable Order Forms, and all applicable laws relating to the use or receipt of the Services, including laws relating to privacy, data protection and use of systems and communications;





**7.1.4** not send or store Viruses or Vulnerabilities to the Service;

**7.1.5** not attempt to gain unauthorised access to or disrupt the integrity or performance of the Service or the data contained therein; or

**7.1.6** not delete, alter add to or fail to reproduce in and on the Service the name of SE and any copyright or other notices appearing in or on the Service or which may be required by SE at any time.

## 8 Intellectual property

**8.1** All Intellectual Property Rights in and to the Services (including in all Applications and all Supplier Provided Materials) belong to and shall remain vested in SE or the relevant third party owner.

**8.2** This *clause 8* shall survive the termination or expiry of our Agreement.

## 9 Defence against infringement claims

**9.1** Subject to clauses 9.2 and 9.5, SE shall:

**9.1.1** defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Services infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom (an IP Claim); and

**9.1.2** pay, subject to clause 9.3, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.

**9.2** The provisions of clause 9.1 shall not apply unless the Customer:

**9.2.1** promptly (and in any event within 2 Business Days) notifies SE upon becoming aware of any actual or threatened IP Claim and provides full written particulars;

**9.2.2** makes no comment or admission and takes no action that may adversely affect SE's ability to defend or settle the IP Claim;

**9.2.3** provides all assistance reasonably required by SE subject to SE paying the Customer's reasonable costs; and

**9.2.4** gives SE sole authority to defend or settle the IP Claim as SE considers appropriate.

**9.3** The provisions of clause 13 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 9.1.

**9.4** In the event of any IP Claim, SE may elect to terminate our Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Fees paid in advance. This clause 9.4 is without prejudice to the Customer's rights and remedies under clause 9.1.





**9.5.2** any Customer Data;

**9.5.3** any Free or Trial Services (or any Support Services provided in connection with them);

**9.5.4** any Open Source Software;

**9.5.5** any breach of our Agreement by the Customer;

**9.5.6** installation or use of the Services (or any part) otherwise than in accordance with our Agreement;  
or

**9.5.7** installation or use of the Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by SE.

**9.6** Subject to clause 13.7, the provisions of this clause 9 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

## 10 Customer Systems and Customer Data

**10.1** Customer Data shall at all times remain the property of the Customer or its licensors.

**10.2** Except to the extent SE has direct obligations under data protection laws, the Customer acknowledges that SE has no control over any Customer Data hosted as part of the provision of the Services and may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Service) complies with all applicable laws and Intellectual Property Rights.

**10.3** The Customer acknowledges and agrees that it is responsible for maintaining safe back-ups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's and Authorised Affiliates' businesses. The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all Customer Data regularly (in accordance with its, its Authorised Affiliates and its Authorised User's needs) and extracts it from each Subscribed Service prior to the termination or expiry of our Agreement or the cessation or suspension of any of the Services.

## 11 Confidential Information

**11.1** Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the exercise of its rights and performance of its obligations under this Agreement.

**11.2** Subject to clause 11.6, each party undertakes to:

**11.2.1** disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including Supplier Personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement; and





the other party's Confidential Information immediately upon becoming aware of the same.

**11.4** The provisions of this clause shall not apply to information which:

**11.4.1** is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;

**11.4.2** is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;

**11.4.3** is independently developed by the recipient, without access to or use of such Confidential Information; or

**11.4.4** is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure,  
except that clauses 11.4.1 to 11.4.3 (inclusive) shall not apply to information to which clause 11.6 relates.

**11.5** This clause 11 shall survive the termination or expiry of our Agreement for a period of 10 years.

**11.6** To the extent any Customer Data is Protected Data, SE shall ensure that such Customer Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of SE's obligations under the Data Protection Addendum. Clauses 11.1 to 11.5 (inclusive) are subject to this clause 11.6.

## 12 Relief

To the maximum extent permitted by law, SE shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

## 13 Limitation of liability

**13.1** The extent of SE's liability under or in connection with our Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 13.

**13.2** Subject to clauses 13.4, 13.5 and 13.6, SE's aggregate liability in respect of each individual Subscribed Service (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement) shall not exceed the greater of:

**13.2.1** an amount equal to the Subscription Fees for the relevant Subscribed Service paid to SE by the Customer in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement; or

**13.2.2** an amount equal to 12 times the Subscription Fees for the relevant Subscribed Service due to be paid to SE for the first month of the relevant Subscribed Service Term.





preceding the first incident giving rise to any claim under our Agreement; or

**13.3.2** an amount equal to 12 times the Fees due or paid to SE for the Services provided in the first month of the Service Period.

**13.4** Subject to clause 13.6, SE shall not be liable for consequential, indirect or special losses.

**13.5** Subject to clause 13.6, SE shall not be liable for any of the following (whether direct or indirect):

**13.5.1** loss of profit;

**13.5.2** loss of use or corruption of software, systems, data or information;

**13.5.3** loss of contract;

**13.5.4** loss of savings, discount or rebate (whether actual or anticipated); and/or

**13.5.5** harm to reputation or loss of goodwill;

**13.5.6** the provision of Free or Trial Services (and all Support Services provided in connection with the same) (howsoever arising under or in connection with our Agreement).

**13.6** Notwithstanding any other provision of our Agreement, SE's liability shall not be limited in any way in respect of the following:

**13.6.1** death or personal injury caused by negligence;

**13.6.2** fraud or fraudulent misrepresentation; or

**13.6.3** any other losses which cannot be excluded or limited by applicable law.

**13.7** This clause 13 shall survive the termination or expiry of our Agreement.

## 14 Suspension

**14.1** SE may suspend access to the Services to all or some of the Authorised Users if:

**14.1.1** SE suspects that there has been any misuse of the Services or breach of our Agreement; or

**14.1.2** the Customer fails to pay any sums due to SE by the due date for payment.

**14.2** Where the reason for the suspension is suspected misuse of the Services or breach of our Agreement, without prejudice to its rights under clause 15 SE will take steps to investigate the issue and may restore or continue to suspend access at its discretion. SE will use commercially reasonable efforts to provide the Customer with notice prior to any suspension.

**14.3** In relation to suspensions under clause 14.1.2, access to the Services will be restored promptly after SE receives payment in full and cleared funds.





**15.1** Our Agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Initial Service Term after which it shall automatically be renewed for successive periods of 12 months (each a Renewal Period), unless:

**15.1.1** either party notifies the other of termination, in writing, at least 45 days before the end of the Initial Service Term or any Renewal Period, in which case our Agreement shall terminate upon expiry of the applicable Initial Service Term or Renewal Period; or

**15.1.2** otherwise terminated in accordance with the provisions of our Agreement; and the Initial Service Term together with any subsequent Renewal Periods shall constitute the Service Period.

**15.2** Either party may terminate our Agreement immediately at any time by giving notice in writing to the other party if:

**15.2.1** the other party commits a material breach of our Agreement and such breach is not remediable;

**15.2.2** the other party commits a material breach of our Agreement which is not remedied within 30 Business Days of receiving written notice of such breach; or

**15.2.3** the other party has failed to pay any amount due under our Agreement on the due date and such amount remains unpaid within 30 Business Days after the other party has received notification that the payment is overdue.

**15.3** SE may terminate or suspend the provision of Free or Trial Services (and all related Support Services) at any time with or without notice.

**15.4** Any breach by the Customer of the Acceptable Use Policy or of clauses 3, 7 or 11 shall be deemed a material breach of our Agreement which is not remediable.

## 16 Consequences of termination

**16.1** Immediately on termination or expiry of our Agreement (for any reason), the rights granted by SE under our Agreement shall terminate and the Customer shall (and shall procure that each Authorised User and Authorised Affiliate shall):

**16.1.1** stop using the Services; and

**16.1.2** destroy and delete or, if requested by SE, return any copies of documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them).

**16.2** Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

## 17 Entire agreement





**17.2** Each party acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement.

**17.3** Nothing in our Agreement shall limit or exclude any liability for fraud.

## 18 Notices

**18.1** Notices under this agreement will be in writing and sent to a party's registered address as set out on the first page of this agreement or to the email address set out below. Notices may be given and will be deemed received:

**18.1.1** by first class post two Business Days after posting;

**18.1.2** by airmail: seven Business Days after posting;

**18.1.3** by hand on delivery;

**18.2** This clause does not apply to notices given in legal proceedings or arbitration.

## 19 Variation

**19.1** No variation of our Agreement shall be valid or effective unless it is:

**19.1.1** an update made in accordance with our Agreement; or

**19.1.2** made in writing, refers to our Agreement and is duly signed or executed by, or on behalf of, each party.

## 20 Assignment and subcontracting

**20.1** Except as expressly provided in our Agreement, SE may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement.

**20.2** Except as expressly permitted by our Agreement, the Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without SE's prior written consent.

## 21 Set off

Each party shall pay all sums that it owes to the other party under our Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## 22 No partnership or agency





## 23 Severance

**23.1** If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected.

**23.2** If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## 24 Waiver

**24.1** No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

**24.2** No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

**24.3** A waiver of any term, provision, condition or breach of our Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

## 25 Costs and expenses

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of our Agreement (and any documents referred to in it).

## 26 Third party rights

A person who is not a party to our Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

## 27 Authority

Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in our Agreement and to perform its obligations under our Agreement.

## 28 Governing law





## 29 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, our Agreement, its subject matter or formation (including non-contractual disputes or claims).











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